No. 88-781

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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

MUNCIE POWER PRODUCTS, INC.,

Petitioner,

vs.

FRED CHURNOCK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NEIL L. CONWAY, ESQ.
Counsel of Record

WILLIAM F. ANZALONE, ESQ.
LAWRENCE A.J. SPEGAR, ESQ.

HOURIGAN, KLUGER, SPOHRER & QUINN, P.C.
Suite 700
United Penn Bank Bldg.
Wilkes-Barre, PA 18701
(717) 825-9401

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Third Circuit "has so far departed from the accepted and usual course of judicial proceedings" so as to necessitate the supervision of the Supreme Court of the United States?

2. Whether the United States Court of Appeals for the Third Circuit "has decided an important question of federal law which has not been, but should be, settled by the Supreme Court of the United States"?

PARTIES TO THE INSTANT PROCEEDING

Muncie Power Products, Inc. is the Petitioner in the instant action (Plaintiff-Appellant below). Additionally, Muncie Power Products, Inc. is a named Defendant in the personal injury claim presently maintained and pending in the Court of Common Pleas of Luzerne County, Pennsylvania. (App. L. at p. 108a).*

Fred Churnock is the Respondent in this action (Defendant-Appellee below). Moreover, Fred Churnock is the Plaintiff in the personal injury claim presently maintained and pending in the Court of Common Pleas of Luzerne County, Pennsylvania. (App. L. at p. 108a).

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*Respondent herein makes reference to the Appendix contained in the previously filed Petition for Writ of Certiorari.

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STATEMENT OF THE CASE

The proceeding at bar stems from an occurrence of February 15, 1986, whereby the injured party, Fred Churnock, suffered serious personal injuries as the result of an accident involving a power take-off. As a result of the personal injuries sustained, Fred Churnock, by and through his counsel, Hourigan, Kluger, Spohrer and Quinn, P.C., by certified mail placed the manufacturer of the take-off, Muncie Power Products, Inc., as well as the installer of the product, Voyton Brothers Truck Body Manufacturing Co., on notice of a potential personal injury/products liability lawsuit. (App. C at p. 11a).

Muncie Power Products, Inc., after receiving notice of the potential lawsuit, filed a declaratory judgment action in the United States District Court for the Middle District of Pennsylvania on December 10, 1987. (App. D at p. 13a). Thereafter, Fred Churnock, the Plaintiff to a prospective personal injury action, and thereupon forced into the position of Defendant in a Declaratory Judgment Action, filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim Upon Which Relief can be Granted on December 29, 1987. (App. F at p. 22a).

On February 3, 1988, Fred Churnock instituted, by way of Writ of Summons, a personal injury/products liability action in the Court of Common Pleas of Luzerne County, Pennsylvania setting forth as damages those personal injuries sustained and suffered by him in the February 15, 1986 accident. (App. I at p. 83a). Similarly, Fred Churnock has instituted suit by way of Complaint filed

August 15, 1988 in the Court of Common Pleas of Luzerne County, Pennsylvania. (App. L at p. 108a). Both the Writ of Summons and Complaint name as Defendants the manufacturer of the power take-off, Muncie Power Products, Inc. (the Petitioner herein), and the installer of the power take-off, Voyton Brothers Truck Body Manufacturing Co. (App. I at p. 83a) (App. L at p. 108a).

By way of Memorandum Order dated February 26, 1988, the United States District Court for the Middle District of Pennsylvania granted the Motion of Fred Churnock to dismiss the Complaint for Declaratory Judgment previously filed by Muncie Power Products, Inc. (App. B at p. 3a). Similarly, the United States Court of Appeals for the Third Circuit, by way of Judgment Order dated August 25, 1988, affirmed the judgment of the District Court. (App. A at p. 1a).

REASONS FOR DENYING THE WRIT

I. Summary

The Judgment Order of the United States Court of Appeals for the Third Circuit, which affirms the decision of the U.S. District Court for the Middle District of Pennsylvania to dismiss declaratory relief in the instant proceeding, is not one which calls for the supervision of the Supreme Court of the United States. The decision of the Third Circuit, in addition to the Federal District Court, to deny a declaratory judgment in an underlying personal injury situation is one based upon sound legal principles

which take into consideration the interests of justice and fairness to all litigants involved. The legal principles, which are well supported by case law authority, do not pose prejudice to any litigant but rather serve as a more effective procedure than declaratory relief in underlying personal injury claims. Finally, the determination of whether to grant certiorari in the instant proceeding is not a novel one, for the Supreme Court of the United States has denied certiorari in similar situations.

II. The United States Court Of Appeals For The Third Circuit Did Not Depart From The Accepted And Usual Course Of Judicial Proceedings In Rendering Its Judgment Order Dated August 25, 1988

Rule 17 of the Supreme Court of the United States sets forth that:

> "A review on writ of certiorari is *not a matter of right,* but of judicial discretion, and will be granted *only when there are special and important reasons therefor.*"
>
> Rules of the Supreme Court of the United States (emphasis added).

In light of the aforementioned Rule 17, the United States Court of Appeals for the Third Circuit, as well as the United States District Court for the Middle District of Pennsylvania, properly dismissed the Complaint for Declaratory Judgment previously filed on behalf of the Petitioner herein, Muncie Power Products, Inc. Neither the Judgment Order of the Third Circuit nor the Memorandum Order of the Federal District Court departs from the "accepted and usual course of judicial proceedings", but rather is based upon traditional principles of law which

take into consideration the interests of justice and fairness to the litigants involved.

In dismissing the Complaint for Declaratory Judgment, the Federal District Court in the instant proceeding cited as persuasive authority the case of *Cunningham Brothers, Inc. v. Bail*,[1] 407 F.2d 1165 (7th Cir. 1969), *cert. denied*,[2] 395 U.S. 959 (1969). In its *Cunningham Brothers* decision, the Seventh Circuit held that "to compel potential personal injury plaintiffs to litigate their claim at a time and in a forum chosen by the alleged tort-feasor would be a perversion of the Declaratory Judgment Act." *Cunningham Brothers*, 407 F.2d at pp. 1167-1168 (App. F at p. 35a). Moreover, the Seventh Circuit went on to reiterate that "it is not one of the purposes of the Declaratory Judgment Act to enable a prospective negligence action defendant to obtain a declaration of non-liability". *Cunningham Brothers*, 407 F.2d at p. 1168, citing *Sun Oil Co. v. Transcontinental Gas Pipe Line Corporation*, 108 F.Supp. 280, 282 (E.D. Pa. 1952), *affirmed*, 203 F.2d 957 (3rd Cir. 1953) (App. F at p. 36a). See also *UNC Resources, Inc. v. Benally*, 518 F.Supp. 1046, 1049 (D. Ariz. 1981); *Frito-Lay v. Dent*, 373 F.Supp. 771, 773, 774 (N.D. Miss. 1974); *State Steamship Co. v. Featherstone*, 240 F.Supp. 830, 831-833 (E.D. Pa. 1965). By granting declaratory judgment in those circumstances and thereby reversing the roles of the parties, a Court "would jeop-

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[1]The United States Court of Appeals for the Third Circuit may also be considered as having relied on this authority by reason of its affirming the order of the United States District Court.

[2]Note that certiorari was denied in this similar (as determined by the Federal District Court, App. B at p. 7a) case.

ardize those procedures which the law has traditionally provided to injured parties by which to seek judicial relief." *Cunningham Brothers,* 407 F.2d at p. 1168 (App. F at p. 36a).

Similarly, to allow a declaratory judgment in a personal injury/products liability claim would encourage a "first to file" rule; a rule which is not subscribed to by courts today. *Tempco Electric Heater Corp. v. Omega Engineering,* 819 F.2d 746, 750 (7th Cir. 1987) ("... 'The wholesome purpose of declaratory acts would be aborted by its use as an instrument of procedural fencing either to secure delay or to choose a forum.' ...", *citing American Automobile Insurance Co. v. Freundt,* 103 F.2d 613, 617 (7th Cir. 1939)). Also, the anticipation of defenses is not a proper use of the Declaratory Judgment Act, for it deprives the Plaintiff of his traditional choice of forum and timing, as well as provoking a disorderly race to the Courthouse. See *Associated Mills, Inc. v. Regina Company, Inc.,* 675 F.Supp. 446 (N.D. Ill. 1987). Finally, while non-liability may be declared in appropriate cases, such relief is inappropriate where "more traditional and effective relief can and should be obtained by another procedure." *Cunningham Brothers,* 407 F.2d at p. 1168 (App. F at p. 37a).

In light of the aforementioned authority, the respective Orders of both the Third Circuit and the Federal District Court, are decisions based upon traditional principles of law which take into consideration the interests of justice and fairness to the litigants involved. Declaratory relief is not appropriate in the instant proceeding for it was never intended to enable a defendant to a pros-

pective personal injury negligence action[3] to obtain a declaration of non-liability, and thereby jeopardizing the more traditional and effective procedure of resolving personal injury claims, i.e. an injured party instituting a lawsuit as the plaintiff.

Denying declaratory relief in the personal injury factual scenario does not constitute prejudice to the prospective defendant or named defendant, but rather amounts to a decision made in the interests of justice and fairness to all the litigants involved, including the prospective defendant and/or named defendant by utilizing the more traditional, but more importantly, more effective procedure of the injured party instituting suit as the plaintiff. (App. B at p. 8a) (App. F at p. 39a, depicting *Cunningham Brothers*, 407 F.2d at p. 1169 ("... in these circumstances we hold that the interest of justice would not be served by entertaining a declaratory judgment action at this time")). Finally, any assertion to the contrary, i.e. declaratory judgment is appropriate, is unfounded and unsupported by any authority. (App. B at p. 8a) (App. F at p. 36a).

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[3]The instant proceeding no longer involves a "prospective" personal injury action, but rather involves a personal injury action presently maintained and pending in the Court of Common Pleas of Luzerne County, Pennsylvania. (App. L at p. 108a).

III. A Defendant's Attempt To Seek Declaratory Relief In An Underlying Personal Injury Claim Does Not Raise An Important Question Of Federal Law Which Has Not Been Settled By The Supreme Court Of The United States, Nor One That Should Be Settled By The High Court.

The specific question of whether declaratory relief is appropriate to enable a prospective defendant to a personal injury/negligence action to obtain a declaration of non-liability is one which has been considered by the Supreme Court of the United States on prior occasions. In those instances, the Supreme Court of the United States has denied certiorari. *Cunningham Brothers, Inc. v. Bail*, 407 F.2d 1165 (7th Cir. 1969), *cert. denied*, 395 U.S. 959 (1969) (App. F at p. 32a). Thus, the question in the instant proceeding as to whether declaratory relief is appropriate does not raise a question of federal law which has not been decided by the Supreme Court of the United States. Rule 17.1(c), Rules of the Supreme Court of the United States.

The next inquiry to be considered is whether the Supreme Court of the United States "should" settle the question of whether declaratory relief is appropriate in the personal injury factual scenario. Rule 17.1(c), Rules of the Supreme Court of the United States. The respective Orders of both the United States Court of Appeals for the Third Circuit and the U.S. District Court for the Middle District of Pennsylvania both rely on traditional principles of tort law which take into consideration the interests of justice and fairness to the parties. These

criteria have served as the basis for those many case law authorities previously set forth which have ruled that declaratory relief is inappropriate in the personal injury factual scenario. Similarly, the fact that declaratory relief has been held to be inappropriate in this circumstance and for the reasons set forth in the pertinent case law authorities establishes the precise reason why any assertion to the contrary is lacking in support.

The final inquiry is whether the instant proceeding presents an "important" question of federal law. Rule 17.1(c), Rules of the Supreme Court of the United States. Declaratory relief has been uniformly denied in instances involving underlying claims for personal injuries. In such cases, declaratory relief has been held inappropriate in light of the more traditional procedure of resolving personal injury claims, i.e., a claim maintained by the injured party as plaintiff. This latter procedure poses no prejudice to a particular litigant but rather serves to ensure the interests of justice and fairness to all the litigants involved. In light of these reasons, the proceeding at bar does not present an important question of federal law for the Supreme Court of the United States, but rather presents a question which has been uniformly and properly decided by both Federal Courts of Appeals and Federal District Courts.

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CONCLUSION

WHEREFORE, for the reasons set forth herein, the Respondent, Fred Churnock, respectfully requests the Honorable Supreme Court of the United States to deny certiorari in the proceeding at bar.

Respectfully submitted,

BY: /s/ Neil L. Conway
NEIL L. CONWAY, ESQ.
Counsel of Record

BY: /s/ Wm. F. Anzalone
WILLIAM F. ANZALONE, ESQ.

BY: /s/ Lawrence A.J. Spegar
LAWRENCE A.J. SPEGAR, ESQ.
HOURIGAN, KLUGER, SPOHRER
& QUINN, P.C.
Suite 700
United Penn Bank Bldg.
Wilkes-Barre, PA 18701
(717) 825-9401

Counsel for Respondent